

## Outline – 2026 CAAF CLE – Professional Responsibility Block 2

### “Professional Responsibility for Litigators”

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## I. Introduction & Purpose of Professional Responsibility Training

- Why PR matters in the military justice appellate system
  - Ethics rules rely on understanding, voluntary compliance, peer expectations, and—when necessary—discipline.
  - Ethical rules provide a framework, not a complete moral code.
- Training philosophy
  - PR training is a continuing journey.
  - Real-world facts drive outcomes; rules guide judgment.
  - Distinction between imperative rules (“shall/shall not”) and permissive rules (“may”).

## II. Applicability of Professional Responsibility Rules

- All Services use rules derived from the ABA Model Rules.
- Applies to:
  - Active, Reserve, and Guard judge advocates
  - Civilian attorneys practicing within the military justice system
  - Any attorney providing legal services in connection with courts-martial or appellate litigation
- Annual training requirements vary but share the same purpose: maintaining competence and ethical readiness.

## III. Core PR Rules for Litigators

### A. Rule 1.1 – Competence (Cal. Rules of Professional Conduct

- Maintain legal knowledge, skill, thoroughness, and preparation.
- Includes understanding relevant technology, including AI.
- **Cal. Rules of Professional Conduct (hereinafter “Cal. RPC”) rule 1.1.**

### B. Rule 1.3 – Diligence

- Reasonable diligence and promptness. *“Perhaps no professional shortcoming is more widely resented than procrastination...”*
- **Cal. RPC rule 1.3**

### C. Rule 1.6 – Confidentiality

- Broadest protection: all information relating to representation.
- Mandatory disclosure to prevent reasonably certain death or substantial bodily

- harm.
- Distinguish confidentiality, privilege, and work-product.
- [Cal. RPC rule 1.6](#)

#### **D. Conflicts of Interest (Rules 1.7 & 1.9)**

- Concurrent conflicts: direct adversity or material limitation.
- Former client conflicts: substantially related matters; “changing sides.”
- Frequent issue in military practice: reassignment between defense, prosecution, and appellate roles.
- [Cal. RPC rule 1.7, 1.9](#)

#### **E. Rule 3.3 – Candor to the Tribunal**

- No false statements; must correct prior false statements.
- Must disclose controlling adverse authority.
- Remedial measures for false evidence.
- *United States v. Baker* and the “firm factual basis” standard.
- [Cal. RPC rule 3.3](#)

#### **F. Rule 3.4 – Fairness to Opposing Party & Counsel**

- No obstruction, falsification, improper inducements, or frivolous discovery.
- Handling physical evidence (contraband, stolen property).
- [Cal. RPC rule 3.4](#)

#### **G. Rule 3.8 – Special Responsibilities of Trial Counsel**

- Probable cause requirement.
- Timely disclosure of all favorable evidence (broader than Brady).
- Limits on extrajudicial statements.
- [Cal. RPC rule 3.8](#)

#### **H. Rule 4.1 – Truthfulness to Others**

- No false statements to third parties.
- Must avoid assisting client fraud; may require withdrawal or disaffirmation.
- [Cal. RPC rule 4.1](#)

#### **I. Rule 5.1 – Responsibilities of Supervisory Lawyers**

- Supervisors must ensure subordinate compliance.
- Applies to senior counsel, division chiefs, appellate chiefs, and training officers.
- [Cal. RPC rule 5.1](#)

#### **J. Rule 8.4 – Misconduct**

- Dishonesty, fraud, deceit, misrepresentation.
- Distinguish ethical misconduct from prosecutorial misconduct.
- [Cal. RPC rule 8.4](#)

## IV. Prosecutorial Misconduct in the Appellate Context

- Appellate courts review:
  - Improper argument
  - Brady/Giglio violations
  - Discovery failures
  - Burden-shifting or misstatements of law
- Key cases: Leipart, Norwood, Hasan, and others.
- Courts remedy prejudice, not professional discipline.

## V. Artificial Intelligence & Professional Responsibility

### A. Litigation and Appellate Risks

- AI-generated filings with hallucinated citations.
- Duty to verify accuracy (Rules 1.1, 1.3, 3.3).

### B. ABA Formal Opinion 512

- Competence: understand AI's risks and limitations.
- Confidentiality: client consent required before entering confidential info into public/self-learning AI.
- Meritorious Claims: avoid frivolous AI-generated arguments.
- Candor: verify all citations and facts.
- Supervision: establish AI-use policies.

### C. DoD-Wide AI Governance Principles

- Human review required for all AI-assisted legal work.
- No CUI/PII/PHI/privileged information in unauthorized tools. *“Any input into publicly accessible GenAI tools is analogous to a public release...”*

### D. Client Use of AI

- Courts have held AI prompts are not privileged; AI tools are not attorneys.
- Counsel must educate clients on risks.

*See also, The State Bar of California Standing Committee on Professional Responsibility and Conduct, Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (2023).*

## VI. Hypotheticals for Discussion

- Accused intends to lie on the stand (Rule 3.3).
- Client brings physical evidence to counsel (Rule 3.4).
- Government counsel discovers late-breaking exculpatory info (Rule 3.8).
- Defense counsel receives AI-generated “case law” that doesn't exist.
- Supervisory failures in a litigation or appellate division (Rule 5.1).

- Cross-assignment conflict issues (e.g., former client now in another branch).

## **VII. Closing Themes**

- PR is about judgment, not memorization.
- Ethical lawyering protects clients, the system, and the profession.
- AI is a tool—never a substitute for professional responsibility.
- Shared standards matter in a system with attorneys from all Services and civilian practice.